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SUPREME COURT OF THE ~~UNITED~~ STATES

OCTOBER TERM, 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

STATEMENT AS TO JURISDICTION.

ARTHUR G. LOGAN,
Counsel for Appellant.

LOGAN & DUFFY,
ROBERT J. BULKLEY,
RUSSELL HARDY,
Of Counsel.

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MISSOURI-KANSAS PIPE LINE COMPANY'S JURISDICTIONAL STATEMENT.

Now comes Missouri-Kansas Pipe Line Company, petitioner in the above-entitled cause, appellant, and, for its jurisdictional statement in support of its petition for appeal filed herewith, shows as follows:

(a) The decree was rendered in a suit in equity brought under the anti-trust laws by the United States. The decree of the District Court appealed from denied Missouri-Kan-

sas Pipe Line Company leave to file its application (intervene) on behalf of Panhandle Eastern Pipe Line Company and to become a party to the cause for the purpose of enforcing certain rights.

The statute under which the jurisdiction of the Supreme Court is invoked is 15 U. S. C. A. § 29; Feb. 11, 1903, c. 544, § 2, 32 Stat. 823; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167, which is known as the "Expediting Act" and which reads:

> "Sec. 29. *Appeals to Supreme Court.* In every suit in equity brought in any district court of the United States, under any of the laws mentioned in the preceding section,* wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof. (Feb. 11, 1903, c. 544, § 2, 32 Stat. 823; Marc. 3, 1911, c. 231, § 291, 36 Stat. 1167.)"

(b) The following cases are believed to sustain jurisdiction:

Missouri-Kansas Pipe Line Company, Petitioner, v. *Columbia Gas & Electric Corporation et al.,* 110 F. (2d) 15, Cert. den. —— U. S. ——, 84 L. Ed. 739 (Advance Sheets #13) Causes #748 and #749;

United States v. *California Co-operative Canneries,* 279 U. S. 553, 73 L. Ed. 838.

The case of *Missouri-Kansas Pipe Line Company, supra,* has resolved the identical question here presented, in that the petitioner herein, Missouri-Kansas Pipe Line Com-

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* The preceding section, namely, Section 28, deals with equitable anti-trust suits in which the United States is complainant under the Anti-Trust Laws.

pany, at two earlier periods sought leave to intervene in this identical cause. At such times the District Court denied the applications to intervene as it subsequently denied the instant application, which denial is the subject-matter of the instant appeal. Appeals were taken from the earlier denials to the Circuit Court of Appeals. The Circuit Court of Appeals for the Third Circuit in the case above referred to and reported as aforesaid at 110 F. (2d) 15, held that the denials of the applications to intervene could not become the subject of an appeal to the Circuit Court of Appeals because under the provisions of the so-called "Expediting Act" that court had no jurisdiction to entertain such appeals, and that the only jurisdiction was in the Supreme Court of the United States. As we now have an appeal from an identical order such as that which the Circuit Court held is reviewable only by the Supreme Court of the United States, and as said decision of the Circuit Court was not reviewed upon the application of Missouri-Kansas Pipe Line Company for writs of certiorari, we submit that the decision of the Circuit Court resolves the question of jurisdiction here presented.

(c) There is appended hereto a copy of an opinion delivered on March 29, 1939, in this cause on the first occasion when Missouri-Kansas Pipe Line Company sought to intervene in the cause. No opinion was delivered the second time Missouri-Kansas Pipe Line Company sought to intervene and no opinion was delivered after the instant application was made and upon the rendering of the decree of April 23, 1940, sought to be reviewed. The opinion appended hereto states the grounds upon which the court acted in denying the first two motions for leave to intervene, and petitioner believes it states the grounds upon which the court acted in denying the instant application.

(d) The date of the decree sought to be reviewed is April 23, 1940. The date upon which the petition for appeal was presented is June 14, 1940.

Respectfully submitted,

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EXHIBIT "A".

Opinion of the Court on Motion to Dismiss Application of Panhandle Eastern Pipe Line Company.

(Filed April 6, 1940.)

Motion to dismiss application to become a party for a limited purpose.

In the anti-trust suit of United States *v.* Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, a consent decree was entered by this court January 29, 1936. The closing paragraph of the decree provides:

> "* * * that Panhandle Eastern, [Panhandle Eastern Pipe Line Company] upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a "proper application" to become a party to this suit. March 23, 1940, a document in the form of an unverified application to become a party was filed. This document is signed "Panhandle Eastern Pipe Line Company By Arthur G. Logan". Immediately below this signature appear "Arthur G. Logan Logan & Duffy Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware". Below and to the left of these signatures the following names of counsel are typed: "Russell Hardy", "Robert J. Bulkley", "Arthur G. Logan".

The propriety of the application to become a party turns upon the terms of the consent decree. By Section III of that decree Gano Dunn was appointed Trustee for the purposes and with the powers and duties set forth in that section. The decree further provides:

> "That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting

rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; *Provided,* that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;"

The business of a corporation is conducted by its board of directors and officers. The control of Panhandle Eastern was vested in the Trustee. He was one of the directors. He shared with Columbia Oil in the selection of the others. He was empowered to remove any of the other directors and replace such directors by others of his own choosing upon his own motion. As the board of directors chose the officers, the Trustee was the final word in the conduct of the business of Panhandle Eastern. This control should be borne in mind in construing paragraph (b) of the decree.

The selection of Gano Dunn as Trustee was made by the ttorney General of the United States as the person best ualified to serve in a very difficult and exacting position om a group of names submitted to him.

Notice of the regular annual stockholders' meeting of anhandle Eastern to be held March 11, 1940 was duly sent stockholders. It notified them that the proposed busiess to be considered at the meeting would be the election of irectors for the ensuing year, an amendment of the certifiate of incorporation, and such other business as might roperly come before the meeting.

Mindful of paragraph (b) of Section III of the decree, ano Dunn obtained from the executive head of Columbia il, the beneficial owner of the stock of Panhandle Eastern eld by him, directions as to voting said stock at the annual eeting. March 5, 1940, Don M. Wilson, a vice president f Columbia Oil and acting president, directed Gano Dunn vote the shares of stock held by him in favor of the amendent to the articles of incorporation proposed by the Board, nd as to other matters, excepting the election of directors, vote said shares "as, in his discretion, seemed best for he interest of Panhandle Eastern Pipe Line Company and enerally to support the management; that, in case any matrs were presented at the meeting on which he had any oubt as to how to vote, he could adjourn the meeting for sufficient time to confer by telephone with the representaves of Columbia Oil & Gasoline Corporation". March 8, 940, the board of directors of Columbia Oil adopted a resoution expressly approving said directions and also approvng a letter from Wilson to Dunn containing the followng directions:

"Dear Mr. Dunn:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower, 165 Broadway, New York City;
Joe D. Creveling, 90 Broad Street, New York City;
Gano Dunn, 80 Broad Street, New York City;
Walter G. Mortland, 37 East 64th St., New York City;
Richard C. Patterson, Jr., 1270 Sixth Avenue, New York City;
Robert C. Winmill, 1 Wall Street, New York City.

Very truly yours,

(Signed) D. M. Wilson,
Vice President."

Before determining upon the six directors named in the above letter, Columbia Oil in conference with Dunn recommended certain persons as directors and from among the number so recommended Dunn selected the six above named as the six of the nine directors of Panhandle Eastern which the stock beneficially owned by Columbia Oil was entitled to elect.

From the foregoing, it appears that Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directors from Columbia Oil that could have been anticipated in the normal course of human events.

March 11, 1940, at the opening of the annual stockholders' meeting, Creveling, President of Panhandle Eastern, took the Chair and called the meeting to order as provided in the by-laws. The Chairman announced the presence of a quorum. Thereupon, Logan, who appeared as a stockholder, moved that Dixon, an associate of Maguire, be made Chairman of the meeting "from this time forward". Creveling declared the motion out of order. Thereupon, Logan took an appeal from the ruling of the Chairman. A vote was taken. Gano Dunn voted to uphold the Chair while Logan and his associates voted the contrary. Creveling announced that his ruling had been upheld.

Shortly thereafter, Logan moved that Article 11 of the by-laws be amended to read:

"The property and business of this corporation shall be managed by its board of directors, consisting of 14 persons."

This drastic action of increasing the number of directors from 9 to 14 was proposed without notice thereof, and evidently with the intent to acquire control of a large and valuable property. The Chairman declared the motion out of order in view of Article 42 of the by-laws, providing that the by-laws may be altered or amended "if notice of the proposed alteration or amendment be contained in the notice of the meeting." An appeal was taken with the same result as in preceding instances.

Motions were made that the Class B stock be not allowed to vote; that officers of the company be chosen by the stockholders; that their salaries be fixed by the stockholders; that Maguire be made president and Tringham treasurer of the company. These motions were disposed of as the others had been. In each instance Dunn voted the majority of the voting stock against the motions, and Logan and his associates voted for the motions.

Hand moved that Panhandle Eastern become a party to the suit of Missouri-Kansas Pipe Line Company and Dammann against the Columbia companies. This motion was similarly disposed of. Hand further moved that the Class A stock of Panhandle Eastern be redeemed. This motion met the same fate.

The following motion concisely states the position of Logan and his associates throughout the meeting:

"Mr. President, I now move that this corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil and Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers."

Later, Hand moved that Panhandle Eastern be directed to bring six suits as suggested in a letter of January 15, 1940

from Missouri-Kansas Pipe Line Company to Panhandle Eastern. The fourth item of this letter was an instruction that Panhandle Eastern intervene in this anti-trust suit by the United States pending in this Court. At this meeting a resolution was offered by Hand that Panhandle Eastern be directed to make the present application. Gano Dunn, holding a majority of the voting stock of Panhandle Eastern, voted against the resolution and it was accordingly defeated.

It was further moved:

"That this corporation will employ Robert J. Bulkley of Cleveland, Ohio, Russell Hardy of Washington, D. C., and Arthur Logan of Wilmington, Delaware, as its attorneys to take action provided for herein;" and further, "that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services".

Thereafter, the meeting adjourned, although as to adjournment Logan objected that Gano Dunn was not qualified to vote without producing before the meeting specific instructions from Columbia Oil.

After adjournment Logan and his associates held a meeting of their own. No quorum was present. Holders of a minority of the stock of Panhandle Eastern, either in person or by proxy, were the only persons present. The motions of Logan and of his associates, defeated at the regular meeting, were resubmitted at the subsequent meeting, and purported to be passed.

March 20, 1940, a special meeting of the Board of Directors of Columbia Oil was held. The Chairman stated that he had received an official stenographic transcript of the proceedings of the annual meeting of stockholders of Panhandle Eastern of March 11, 1940. Upon consideration of those minutes and of the manner in which Gano Dunn, Trustee, had voted the stock in Panhandle Eastern, it was resolved:

"That all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said stockholders' meeting be and the same hereby are in all respects approved, ratified and confirmed".

In construing the language of the consent decree, I find hat the votes cast by Gano Dunn were authorized by the owers conferred upon him by the consent decree and that is votes were well within the directions given to him by Columbia Oil. From this finding, it follows that the so-alled application filed in this proceeding was not authorized y Panhandle Eastern or by any responsible body having ontrol of said corporation.

The motion to dismiss the alleged application of Pan-andle Eastern for leave to become a party hereto and for ther relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.

2. The attorneys whose names appear on said application s attorneys for Panhandle Eastern were not authorized by hat company to act in its behalf in filing such application.

3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the nnual meeting of March 11, 1940, in accordance with pro-isions of said consent decree, and pursuant to valid direc-ions from Columbia Oil.

And order may be submitted.

(Sgd.) JOHN P. NIELDS, *J.*

April 6, 1940.

EXHIBIT "B".

Opinion of the Court on Motion of Missouri-Kansas Pipe Line Company for Leave to Intervene.

(Filed March 29, 1939.)

MOTION FOR LEAVE TO INTERVENE.*

Missouri-Kansas Pipe Line Company, a Delaware corporation, moves the court for an order granting it leave to intervene in this proceeding and to file the petition annexed to its motion and requiring defendants respectively to answer or otherwise plead thereto.

Petitioner alleges it owns 324,326 shares of the 728,652 shares of the outstanding common stock of Panhandle Eastern Pipe Line Company.

This suit in equity was brought by the Attorney General of the United States under the Anti-Trust acts. The defendants duly answered and denied the material allegations of the bill. Upon a stipulation between the parties to this cause a consent decree (hereinafter referred to as "consent decree") was entered on January 29, 1936. Section V of the decree provided:

"That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

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* In the interest of brevity, Columbia Gas & Electric Corporation will be referred to in this opinion as "Columbia Gas", Columbia Oil & Gasoline Corporation as "Columbia Oil", Panhandle Eastern Pipe Line Company as "Panhandle Eastern" and Missouri-Kansas Pipe Line Company as "Mokan".

December 21, 1938 United States of America filed its supplemental complaint praying, inter alia, that this court exercise the jurisdiction retained by it in section V above recited and in order to give full effect to said decree that this court enter judgment:

"3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, * * *

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this court for approval; * * * a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a), * * * a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Reconstituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, * * *" for a limited term and with powers and duties appropriately defined.

The time for answer was extended by stipulation and the answer has not been filed to the Government's supplemental complaint.

February 6, 1939 Mokan filed its motion for leave to intervene in this suit and to file the petition annexed to its motion. The prayers of this petition are:

"1. That the defendants be adjudged guilty of contempt for failure to comply with and for having violated the terms, conditions and provisions of the Decree of this Court entered herein on January 29, 1936.

2. That said Decree be interpreted, enlarged and enforced as follows:

(a) That it be decreed that Columbia Gas holds as trustee for Panhandle Eastern its pipe line from Dana to Zionsville, Indiana, and from Zionsville to Detroit, Michigan, and that Columbia Gas be ordered and directed forthwith to transfer said line to Panhandle Eastern upon such terms and conditions for the security of its investment therein as this Court may deem just and to account to Panhandle Eastern for the issues and profits thereof.

(b) That Columbia Gas be ordered and directed forthwith to cause Michigan Gas Transmission Corporation to transfer to Panhandle Eastern any and all contracts or agreements for the supply of gas entered into with any municipalities, persons, firms or corporations in the States of Indiana, Michigan and Ohio, since the entry of the said Decree.

(c) That Columbia Oil be ordered forthwith to surrender to Panhandle Eastern at cost for cancellation its Class B preferred stock of Panhandle Eastern and 80,000 shares of the common stock of Panhandle Eastern.

(d) That Columbia Oil be ordered forthwith to sell its remaining stock of Panhandle Eastern to a purchaser or purchasers and upon terms to be approved by this Court.

(e) That the exceptions set forth in Article II of the decree be stricken out.

3. That Gano Dunn be removed as Trustee, and that a new Trustee be appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities.

4. That such other or further relief may be granted as to the Court may seem just and equitable."

In prayer 1 Mokan seeks to raise a question of contempt by defendants in respect to alleged violations of the consent decree of January 29, 1936. By subdivisions (a) and (b) of prayer 2 Mokan seeks to raise a complicated question of property in a transmission line owned by Michigan Gas Transmission Corporation, a subsidiary of Columbia Gas, and extending from the terminus of Panhandle Eastern at

Dana, Indiana to Detroit, Michigan. By subdivision (c) of prayer 2 Mokan seeks to procure the retirement of 80,000 shares of common stock of Panhandle Eastern now held by Columbia Oil. By prayer 3 Mokan seeks to have the past conduct of the trustee appointed under the consent decree of January 29, 1936 inquired into in order that he may be removed for alleged violations of his trust. The statement of these prayers indicates how far they depart from the scope of the supplemental complaint and how serious a delay would be involved in the determination of the questions raised thereby.

Intervention of Right.

Intervention of right is governed by subdivision (a) of Rule 24 of the Federal Rules of Civil Procedure:

"(a) INTERVENTION OF RIGHT.—Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

Courts are unanimous in requiring prompt action on the part of an intervenor who seeks to assert rights in a suit to which he is not a party. The new rule above quoted requires that application for intervention be timely. It begins with the words "Upon timely application * * *." The matters of which petitioner complains,—the acquisition by Columbia Gas of ownership of the Detroit extension, the acquisition by Columbia Oil of class B preferred stock of Panhandle Eastern, the acquisition by Columbia Oil of common stock of Panhandle Eastern in connection with the Detroit financing, and the March 17, 1936 contract,—all took place before June 1, 1936. Columbia Gas and Columbia Oil have spent many millions of dollars carrying out

the transactions. Petitioner had full notice and knowledge of all these arrangements prior to their consummation. These details were set out in the offer of settlement made by Columbia Oil and Columbia Gas to Mokan and were accepted by Mokan after full hearing thereon in the court of Chancery of the State of Delaware. Obviously Mokan's application is not a timely one.

Clause (1) of subdivision (a) of Rule 24 is plainly inapplicable.

Clause (2) of subdivision (a) relates to cases in which the applicant for intervention has an interest in the action represented by a party so that the applicant may be bound by a judgment in the action. The question of adequacy of representation does not arise unless the applicant is represented in the action. Neither Mokan, as a substantial stockholder of Panhandle Eastern nor Panhandle Eastern, is represented by the United States. The interest of either of them will not be bound by a judgment on the supplemental complaint. The judgment of this court upon the issues tendered in the supplemental complaint will not bind Mokan or Panhandle Eastern. Such a judgment can not bind them with respect to the wholly different issues tendered by Mokan's proposed petition of intervention. Petitioner has no right to encumber the main action which is being conducted by the Attorney General with extraneous issues of a private nature. United States *v.* Radio Corporation, 3 F. Supp. 23, 25. United States *v.* Northern Securities Co., 128 Fed. 808, 813.

Clause 3 of subdivision (a) relates to cases in which the applicant will be adversely affected by a disposition of property in the custody of the court in which the applicant asserts an interest. This property consists of stock in Panhandle Eastern beneficially owned by Columbia Oil, and transferred to the voting trustee. In that stock neither Mokan nor Panhandle has any property right. Any disposition of that stock which would terminate control of Columbia Oil over Panhandle Eastern could not be regarded as adverse to either Panhandle Eastern or Mokan. On the contrary, Mokan seeks such disposition. Early in the English law a third person claiming an interest in prop-

erty under the control of the court was permitted by interrogatories to establish his claim to or lien upon such property. This principle found expression in old Equity Rule 37. The new rule does not specifically set forth the nature of the interest in the property which a person must have in order to establish his claim to intervention as a matter of right. It is improbable that the Supreme Court in promulgating this new rule intended to destroy well established principles as the basis of intervention as of right. It would produce chaos to require the courts to recognize the absolute right to intervention of strangers who had no legal or equitable interest in the subject matter of the action.

Clause 3 contemplates that the person having the right of intervention should have a legal interest in the property in the custody of the court. The res in this case is the Panhandle Eastern stock in the possession of Dunn. That stock is not being administered by the court. Dunn is not an administrative officer of the court. His duties as trustee merely contemplate the holding of Panhandle Eastern stock owned by Columbia Oil for the purpose of seeing that the provisions of the consent decree are carried out and that the affairs of Panhandle Eastern are free from the control and domination of Columbia Gas. Dunn is obliged to turn over to Columbia Oil all dividends except certain stock dividends. He must vote the stock in the manner directed by Columbia Oil. He is a mere watchman to see that the provisions of the consent decree are carried out. The stock of Panhandle Eastern is not "in the custody of the court or of an officer thereof" within the meaning of Rule 24(a).

Petitioner's final contention is that Rule 24(a) has broadened the well established principle to the extent of no longer requiring "any actual property interest in the res". This position is without authority to sustain it.

Permissive Intervention.

Permissive intervention is governed by subdivision (b) of Rule 24 of Rules of Civil Procedure:

"(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action;

(1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Clause (1) has no application. Clause (2). The prayers of the proposed petition of intervention diverge sharply from the subject matter of the supplemental complaint. Affording petitioner relief would fundamentally alter and seriously complicate the character of this proceeding. The bare statement of the prayers sufficiently indicates how far they depart from the scope of the Government's complaint and how serious a delay would be involved in the determination of the questions raised thereby. The situation thus falls squarely within the last sentence of subdivision (b), which codifies prior equity practice.

"The intervenor was not entitled to come into the suit for the purpose of having adjudicated a controversy solely between it and plaintiff. Issues tendered by or arising out of plaintiff's bill may not by the intervenor be so enlarged. It is limited to the field of litigation open to the original parties * * *. Introduction by intervention of issues outside those that properly may arise between the original parties complicates the suit and is liable to impose upon plaintiff a burden having no relation to the field of the litigation opened by his bill". Chandler Co. *v.* Brandtjen, Inc., 296 U. S. 53, 57, 59.

"It is apparent that, the right to become a party to the litigation being given, the range of activity of the newcomer in the prosecution or defense of the interest he is thus permitted to assert must necessarily be as extensive as, but no greater than, that allowed the original parties to the suit." Leaver *v.* K. & L. Box & Lumber Co., 6 F. (2d) 666.

Anti-Trust Suit.

An individual may not participate in a suit brought under the Anti-Trust Laws by the Attorney General of the United

States where the Attorney General does not consent to such intervention. In the present case the Attorney General affirmatively objects to the intervention. In its brief the government states that the United States opposes the motion of Mokan for leave to intervene "because (1) Mokan is not entitled to intervention of right, and (2) intervention by Mokan for the purposes set forth in its proposed petition would unduly complicate and delay the adjudication of the issues tendered by plaintiff's supplemental complaint". When the Anti-Trust laws are violated frequently there are private persons or corporations who feel themselves aggrieved.

Outside this suit Mokan can assert any claim for damages it may have against the defendants or for relief against Dunn for his alleged breaches of trust. Such a right has been recognized by this court.

"However the petitioner and other stockholders of Radio Corporation should not be deprived of their 'day in court'. The petitioner or any stockholder of Radio Corporation believing himself aggrieved by the action of General Electric or Westinghouse under or pursuant to the provisions of the consent decree may file a bill in this court seeking appropriate relief." United States *v.* Radio Corporation, 3 F. Supp. 23.

Mokan's motion for leave to intervene must be denied.

(Sgd.) JOHN P. NIELDS, *J.*

March 29, 1939.